How does a taxpayer determine whether the 2005 gross conservation easement credit is limited to the net tax liability or is a refundable credit?

In tax year 2005, donors of a credit may be allowed to claim a refundable gross conservation easement credit in excess of their net tax liability. However, there are limitations that may prevent a taxpayer from taking advantage of the refundable credit in 2005.

Step 1: Determine the group of taxpayers who are eligible to claim a credit from the donation in question. The taxpayers may be individuals, entities, or a combination of the two. Specifically, the group of taxpayers may include:

- a. Resident individual, estate, trust or C corporation that donated the easement,
- b. All partners of a partnership, shareholders of an S corporation, or members of any other pass-through entity that donated the easement,
- c. Resident husband and wife whether filing joint or separate returns,
- d. All members of a joint tenancy, tenancy in common, or any other form of joint ownership of the property on which the easement was donated,
- e. All transferees of the credit.

Example: Partnership A donates a conservation easement in 2005 that generates a \$200,000 credit. Partnership A sells \$50,000 of the credit on behalf of its partners to Taxpayer B, leaving \$150,000 to be distributed to its partners. The partnership passes \$50,000 in credits respectively to its three partners, C, D and E. C and D keep their credit, but E sells \$20,000 of his credit to Taxpayer F. The group that must coordinate the credit being claimed consists of taxpayers B, C, D, E and F.

Step 2: Determine the options the taxpayer or group of taxpayers have in claiming the credit.

- a. All members of the group may claim any credit available to them up to the amount of the net tax liability* reported on the Colorado income tax return, or
- b. Some or all members of the group who are allocated a credit (categories (a) through (d) in Step 1) may claim a credit in excess of the net tax liability, but transferees of the credit (category (e) in step 1) may not claim a credit in excess of the net tax liability.

Example: The net tax liability of the members of the group are as follows: B \$60,000; C \$3,000; D \$90,000; E \$500; F \$20,000. If the members of the group decide to file using option (a), then the credit that can be claimed by each taxpayer is limited to: B \$50,000; C \$3,000; D 50,000; E \$500; F \$20,000.

Step 3: If a refundable credit is claimed by one or more members of the group (see Step 2(b)), then determine the amount of credit that will be claimed by each member of the group.

- 1. If the conservation easement was donated in 2003 or later, the total combined credit claimed by all members of the group is limited to \$50,000.
- 2. If the conservation easement was donated in 2002 or earlier, the total combined credit claimed by all members of the group is limited to \$20,000.

Example: The group of taxpayers must coordinate how much credit each utilizes against the 2005 tax because there is a \$50,000 limit. Taxpayers B and F may not claim a refundable credit because they are transferees of the credit. One of many possible scenarios would be: B \$10,000; C \$0; D \$10,000; E \$25,000; F \$5,000. The practical problem in this scenario is that taxpayers B and F purchased large credits in 2005 that they will not be able to fully utilize until 2006.

Step 4: If a refundable credit is claimed by one or more members of the group and it is determined that the limitation in Step 3 is exceeded by the group as a whole.

- 1. Any refundable credit claimed by members of the group will be disallowed for 2005 and the excess credit will be carried forward to 2006.
- 2. If the aggregate credit utilized by the group after this adjustment is less than the limitation in step 3, then the members of the group may amend their returns to claim allowable refundable credits up to the limitation threshold. The amendment of the credits will require cooperation and communication between members of the group and can not be done by the Department of Revenue because of confidentiality restrictions.

Example: The group does not coordinate the credits claimed and the following credits are utilized: B \$50,000; C \$50,000; D \$50,000; E \$30,000; F \$20,000. Because C and E claim a refundable credit the aggregate credit utilized by the group may not exceed \$50,000. The following credits would be adjusted for 2005 and would have to be carried forward to 2006: C \$47,000; E \$29,500.

*The 2005 net tax liability is the amount on line 22, Form 104; line 12, Form 105; line 13, Form 106; and line 27, Form 112. The taxpayer may elect to defer or forgo claiming other credits in order to increase the net tax liability available to absorb the gross conservation easement credit.